REMARKS

Claims 1-29 and 55-88 are withdrawn. Claims 30-54 remain pending. Claims 30 and 42 are amended herein. No new matter has been added as a result of the Claim amendments.

Claim Rejections - 35 U.S.C. §103(a)

Claims 30-31, 33-37, 39-43, 45-50, 52 and 54

The present office action states that Claims 30-31, 33-37, 39-43, 45-50, 52 and 54 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuriya et al. (20010056404) hereinafter "Kuriya", in view of Leoutsarakos (20040039905) hereinafter "Leo" and further in view of Peinado et al. (20020007456) hereinafter "Peinado". Applicants have reviewed the cited reference and respectfully submit that the embodiments of the present invention as recited in Claims 30-31, 33-37, 39-43, 45-50, 52 and 54 are not taught or rendered obvious by Kuriya either alone or in combination with Leo and further in view of Peinado for the following reasons.

Applicants respectfully state that Independent Claims 30 and 42 include the feature "said usage compliance mechanism <u>controlling a data output path</u> by **diverting** a <u>commonly used data pathway</u> of a media content provider application to <u>***a controlled data pathway*** monitored by</u> said compliance mechanism." Support for the Claimed feature can be found throughout the Figures and Specification including, but not limited to, Figures 3 and 5A-5C and page 21 lines 14-22 of the Specification.

To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the cited art. *In re Royka*, **490 F.2d 981, 180 USPQ 580 (CCPA 1974). (MPEP 2143.03).**

Applicants have reviewed Kuriya and do not understand Kuriya to teach the usage compliance mechanism <u>controlling a data output path</u> by <u>diverting</u> a <u>commonly used data pathway</u> of a media content provider application to a <u>controlled data pathway</u> monitored by the compliance mechanism (emphasis added).

Further, Applicants agree with the present Office Action statements that Kuriya does not explicitly teach "determining which content sources of a plurality of content sources to provide delivery of said instance of media content, provided said client node is authorized to receive said instance of media content."

With respect to Leo, Applicants have reviewed Leo and do not understand Leo to teach the usage compliance mechanism controlling a data output path by diverting a commonly used data pathway of a media content provider application to a controlled data pathway monitored by the compliance mechanism (emphasis added).

Further, Applicants agree with page 3 and 4 of the present Office Action's statements that Kuriya and Leo do not explicitly teach: activating a compliance mechanism in response to said client node receiving said instance of media content, said compliance mechanism coupled to said client node, said client node having a media content presentation application operable thereon and coupled to said compliance mechanism; controlling a data path of a kernel-mode media device driver of said client node with said compliance mechanism upon detection of a kernel streaming mechanism operable on said client node; and directing said media content from said kernel-mode media device driver to a media device driver coupled with said compliance mechanism, via said data path, for selectively restricting output of said media content.

Regarding Peinado, Applicants respectfully submit that Peinado does not overcome the shortcomings of Kuriya. That is, Applicants do not understand Peinado to teach or render obvious the feature of "usage compliance mechanism controlling a data output path by **diverting a commonly used data pathway** of a media content provider application to **a controlled data pathway** monitored by said compliance mechanism" as Claimed in Claims 30 and 42.

In contrast, Applicants understand Peinado to teach a device that determines and then authenticates the modules in the commonly used data pathway of a rendering Application (see Col. 33-34). In other words, Applicants do not understand Peinado to teach the diverting of data from an application's commonly used data path, but instead, Applicants understand Peinado to

determine <u>the commonly used data path of the application</u> and then <u>authenticate the modules</u> <u>within</u> the <u>commonly used data path</u> (emphasis added).

For example, Applicants understand Peinado to teach, in detail, a method for determining the modules in the commonly used data pathway.

As such, Applicants respectfully submit that Peinado cannot be teaching the diversion of the common pathway to a controlled data pathway. Specifically, if Peinado were teaching the diversion to a controlled data pathway, there would be no reason to determine the data path and the modules associated therewith, because that information would be known.

For this reason, Applicants respectfully submit that Peinado teaches directly away from the feature of "usage compliance mechanism <u>controlling a data output path</u> by **diverting a** **commonly used data pathway** of a media content provider application to **a controlled data** **pathway** monitored by said compliance mechanism" as Claimed in Claims 30 and 42.

Moreover, Applicants understand Peinado to teach a number of methods for authenticating the modules once they are determined.

Again, Applicants respectfully submit that Peinado cannot be teaching the diversion of the common pathway to a controlled data pathway. Specifically, if Peinado were teaching the diversion to a controlled data pathway, there would be no reason to determine the data path and authenticate the modules associated therewith, because that information would be known.

For this additional reason, Applicants respectfully submit that Peinado teaches directly away from the feature of "usage compliance mechanism <u>controlling a data output path</u> by **diverting a commonly used data pathway** of a media content provider application to **a** **controlled data pathway** monitored by said compliance mechanism" as Claimed in Claims 30 and 42.

In addition, Applicants understand Peinado to teach scrambling content when it is to be output in naked form along the pathway. Thus, not only does Peinado teach <u>determining the commonly used data pathway</u> and <u>authenticating the modules</u> along the <u>commonly used data pathway</u>, but Applicants further understand Peinado to teach and render obvious <u>adding scrambling</u> to the data at the times when the <u>commonly used data pathway</u> <u>outputs</u> the naked content along the <u>commonly used data pathway</u> (emphasis added).

As such, Applicants respectfully point out that Peinado cannot be teaching the diversion of the common pathway to a controlled data pathway. Specifically, if Peinado <u>were teaching</u> the diversion to a controlled data pathway there would be **no reason** to **determine the data path**, *authenticate the modules associated therewith* and **add scrambling** to the commonly used pathway (emphasis added).

For this further reasoning, Applicants respectfully submit that Peinado teaches directly away from the feature of "usage compliance mechanism <u>controlling a data output path</u> by **diverting a commonly used data pathway** of a media content provider application to **a controlled data pathway** monitored by said compliance mechanism" as Claimed in Claims 30 and 42.

As such, Applicants respectfully submit that Claims 30 and 42 are not taught or rendered obvious by Peinado. Furthermore, Applicants respectfully state that based on the above reasoning, neither Kuriya alone nor in combination with Leo and Peinado teaches or renders obvious the features of Claims 30 and 42. As such, Applicants respectfully submit that Claims 30 and 42are not taught or rendered obvious by Kuriya in view of Leo and further in view of Peinado under 35 U.S.C. §103(a).

With respect to Claims 31, 33-37, 39-41, 43, 45-50, 52 and 54, Applicants respectfully state that Claims 31, 33-37, 39-41, 43, 45-50, 52 and 54 depend from the allowable Independent Claims 30 and 42 and recite further features of the present claimed invention. Therefore, Applicants respectfully state that Claims 31, 33-37, 39-41, 43, 45-50, 52 and 54 are also allowable as pending from allowable base Claims.

<u>Claims 32, 38, 44, 51 and 53</u>

The present office action states that Claims 32, 38, 44, 51 and 53 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuriya in view of Leo and further in view of Peinado. Applicants have reviewed the cited reference and respectfully submit that the embodiments of the present invention as recited in Claims 32, 38, 44, 51 and 53 are not taught or rendered obvious by Kuriya either alone or in combination with Leo and further in view of Peinado for the following reasons.

Regarding Claim 32, Applicants respectfully submit that the Office Action has provided inadequate support of a finding of obviousness or inherency. The Office Action states that the features of Claim 32 are obvious if not inherent. Applicants respectfully submit that the claimed embodiments of determining which content source of said plurality of content source contains said instance of media content is not considered to be common knowledge or well-known in the art, as asserted by the Examiner.

The "assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support" (MPEP 2144.03(A); *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001)). In particular, "[i]f such notice is taken, the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge" (MPEP 2144.03(B); see *In re Soli*, 317 F.2d 941, 946, 37 USPQ 797, 801 (CCPA 1963); see also *In re Chevenard*, 139 F.2d 711, 713, 60 USPQ 239, 241 (CCPA 1943)).

Applicants respectfully submit that the basis for obviousness as relied on by the Examiner is not set forth explicitly, as required. Applicants respectfully submit that the Examiner has not stated why the teachings are common knowledge. Applicants respectfully assert that the Examiner has taken a stand of obviousness without providing a clear and unmistakable technical line of reasoning, as required.

Applicants respectfully assert that the claimed features are not common knowledge. "It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection is based" (emphasis added; MPEP 2144.03(E); See *In re Zurko*, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001); *In re Ahlert*, 424 F.2d 1088, 1092, 165 USPQ 418, 421 (CCPA 1970)).

Accordingly, Applicants respectfully that the Examiner provide adequate evidence in the form of an affidavit in support of the finding of obviousness or inherency, in accordance with 37 CFR § 1.104(d)(2).

Regarding Claim 53, Applicants respectfully submit that the Office Action has provided inadequate support of a finding of obviousness or inherency. The Office Action states that the features of Claim 53 are well known in the art. Applicants respectfully submit that the claimed embodiments of a custom media device is an emulation of a custom media driver is not considered to be common knowledge or well-known in the art, as asserted by the Examiner.

The "assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support" (MPEP 2144.03(A); *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001)). In particular, "[i]f such notice is taken, the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge" (MPEP 2144.03(B); see *In re Soli*, 317 F.2d 941, 946, 37 USPQ 797, 801 (CCPA 1963); see also *In re Chevenard*, 139 F.2d 711, 713, 60 USPQ 239, 241 (CCPA 1943)).

Applicants respectfully submit that the basis for obviousness as relied on by the Examiner is not set forth explicitly, as required. Applicants respectfully submit that the Examiner has not stated why the teachings are well known in the art. Applicants respectfully assert that the Examiner has taken a stand of obviousness without providing a clear and unmistakable technical line of reasoning, as required.

Applicants respectfully assert that the claimed features are not common knowledge. "It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection is based" (emphasis added; MPEP 2144.03(E); See *In re Zurko*, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001); *In re Ahlert*, 424 F.2d 1088, 1092, 165 USPQ 418, 421 (CCPA 1970)).

Accordingly, Applicants respectfully that the Examiner provide adequate evidence in the form of an affidavit in support of the finding of obviousness or inherency, in accordance with 37 CFR § 1.104(d)(2).

Furthermore, Applicants respectfully state that Claims 32, 38, 44, 51 and 53 depend from the allowable Independent Claims 30 and 42 and recite further features of the present claimed invention. Therefore, Applicants respectfully state that Claims 32, 38, 44, 51 and 53 are also allowable as pending from allowable base Claims.
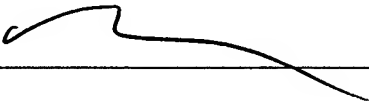
Conclusion

In light of the above-listed remarks, Applicant respectfully requests allowance of Claims 30-54.

The Examiner is urged to contact Applicant's undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Respectfully submitted,

WAGNER BLECHER LLP

Date: _11/02/2007_

John P. Wagner, Jr.
Reg. No. 35,398

WESTRIDGE BUSINESS PARK
123 WESTRIDGE DRIVE
WATSONVILLE, CALIFORNIA 95076
(408) 377-0500